

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION

United States of America)	
)	C/A No. 6:05-453-HMH
vs.)	Cr. No. 6:01-48
)	
Milton Braten,)	OPINION AND ORDER
)	
Movant.)	

This matter is before the court on Milton Braten’s (“Braten”) motion to vacate, set aside, or correct his sentence pursuant to 28 U.S.C. § 2255. Braten filed his § 2255 motion on February 14, 2005.

On April 19, 2006, the Government filed a superseding indictment against Braten in criminal case number 6:06-196. Counts Four and Five of the superseding indictment charge Braten with knowingly making material false statements in his § 2255 motion and obstructing justice by filing “a material false pleading . . . in a pending proceeding before the United States District Court for the District of South Carolina.” (Superseding Indictment 16-17.) In a status conference on May 8, 2006, Braten objected to having an evidentiary hearing on his § 2255 motion because testifying in an evidentiary hearing would violate his Fifth Amendment right against self-incrimination based on the charges in the superseding indictment arising from his § 2255 motion. (Status Conference Tr. 12.) In light of Braten’s objections, the court temporarily suspended having an evidentiary hearing at that time. (*Id.* 13.) The proceedings in criminal case number 6:06-196 are currently still pending. Therefore, in order to preserve Braten’s Fifth

Amendment right against self-incrimination, the court dismisses his § 2255 motion without prejudice and with leave to refile pending the resolution of his criminal proceedings.

It is therefore

ORDERED that Braten's § 2255 motion is dismissed without prejudice and with leave to refile pending the resolution of his current criminal proceedings in criminal case number 6:06-196.

IT IS SO ORDERED.

s/Henry M. Herlong, Jr.
United States District Judge

Greenville, South Carolina
February 4, 2008